

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

TALIB ALSAIFULLAH,

Plaintiff,

-v.-

1:06-CV-1481
(NAM)(DRH)

JUDGE WILLIAM CARTER,

Defendant.

APPEARANCES:

OF COUNSEL:

TALIB ALSAIFULLAH

Plaintiff, *pro se*

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Attorney General for the State
of New York
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SENTA B. SUIDA, ESQ.
Assistant Attorney General

DAVID R. HOMER, U.S. MAGISTRATE JUDGE

DECISION and ORDER

Plaintiff Talib Alsaifullah commenced this action by filing a *pro se* civil rights complaint on December 11, 2006. Dkt. No. 1. Thereafter, Plaintiff filed an amended complaint as of right pursuant to Rule 15(a) of the Federal Rules of Civil Procedure.¹ Dkt. No. 13. By Order of this Court filed on March 13, 2007, Plaintiff's amended complaint was accepted for filing, and Plaintiff was directed to, within thirty days of the filing date March 13, 2007 Order, serve a copy of the

¹ Rule 15(a) provides, in pertinent part, that a party may amend his pleading "once as a matter of course at any time before a responsive pleading is served." While the Defendant had been served in this action (Dkt. No. 11), he had not answered the complaint. Since Plaintiff's amended complaint was filed prior to the Defendant's answer, he could file an amended complaint without leave of this Court.

amended complaint on counsel for the Defendant. Dkt. No. 14.

By letter request filed on September 13, 2007, Plaintiff asked the Court for default judgment against the Defendant, as Defendant had not responded to the amended complaint. Dkt. No. 16. The letter request was stricken from the docket by Order of this Court filed on September 21, 2007, because the request was not in the form of a motion, and was not actually received by the Court directly, but was rather forwarded to the Court by counsel for the Defendant. Dkt. No. 17. Moreover, Plaintiff was advised that “[u]ntil plaintiff has provided proof of service of the amended complaint on defense counsel [as required by the March 13, 2007 Order], the Court cannot consider default judgment against the defendant.” *Id.* Thereafter, Plaintiff forwarded to the Court an affidavit of service demonstrating that, on February 28, 2007, he served the amended complaint upon counsel for the Defendant. Dkt. No. 18. Counsel for the Defendant has replied to Plaintiff’s submission, asserting that “the affidavit of service plaintiff filed with his October 10, 2007 letter, dated February 28, 2007, was before the March 13, 2007 Order, and was only related to the proposed amended complaint, prior to that pleading having been approved by the Court.” Dkt. No. 19.

It is clear that the Defendant’s counsel was actually served with the amended complaint by Plaintiff on or about February 28, 2007, as well as via the electronic filing system in place in this District. *See* Dkt. Nos. 13, 18. While neither form of service was compliant with the March 13, 2007 Order, in the interest of judicial economy and to avoid further delay, the Court hereby waives the requirement that Plaintiff serve another copy of the proposed amended complaint on counsel for the Defendant. Since Defendant has been served with the amended complaint, and has appeared by counsel, the Court finds that Defendant will not be prejudiced by this waiver. Accordingly,

Defendant is directed to respond to the amended complaint **within forty-five days** of the filing date of this Order.

WHEREFORE, it is hereby

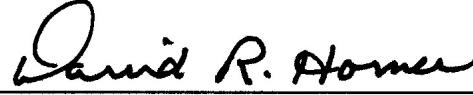
ORDERED, that Plaintiff's obligation to serve another copy of his amended complaint on counsel for Defendant, as set forth in this Court's March 13, 2007 Order, is hereby waived, and it is further

ORDERED, that a formal response to Plaintiff's amended complaint be filed by the Defendant or his counsel **within forty-five (45) days** of the filing date of this Order,² and it is further

ORDERED, that the Clerk serve a copy of this Order on the parties in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 15, 2007



United States Magistrate Judge

² The Court notes that, prior to this Order, Defendant was not obligated to respond to the amended complaint.